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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 13

WILLIAM L. MAXWELL,

Petitioner,

—v.—

O. E. BISHOP, Superintendent of Arkansas State Penitentiary,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITIONER'S MOTION FOR ENLARGEMENT OF THE GRANT OF *CERTIORARI*

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In this capital case, *certiorari* was sought on three related issues challenging the administration of the death penalty for the crime of rape in the State of Arkansas. Petitioner asked the Court to determine whether (1) unconstitutional racial discrimination in the verdicts of life or death handed down by Arkansas juries had been proved and was unrebutted on this record; (2) the arbitrary power committed by state law to capital jurors, enabling them to decide the question of life or death lawlessly and capriciously, and to discriminate on racial or other invidious grounds if they so choose, immune against review or correction of any sort, was itself unconstitutional; and (3) the single-verdict capital trial procedure, which deprives the jury of information prerequisite to rational sentenc-

ing choice except at the cost of destruction of the defendant's privilege against self-incrimination and severe prejudice to him on the issue of guilt or innocence, was (standing alone or in combination with the arbitrary sentencing discretion just described) unconstitutional. We respectfully refer the Court to pp. 2-4 of the Petition for a Writ of Certiorari for the detailed phrasing of each question.

Certiorari was granted on December 16, 1968, limited to the second and third questions. The case was argued early in March of 1969 and was ordered restored to the calendar for reargument at the end of May. In advance of that reargument, we now move that the order granting *certiorari* be enlarged to include the first of the described questions as well.

We must candidly admit that our reasons for believing this issue worthy of review by the Supreme Court of the United States are no different than they were in 1968. The present record presents, we think, a plain and solid case of racial discrimination in its most vicious form. It documents what knowledgeable observers have long known: that juries in those few, largely Southern, jurisdictions which retain the death penalty for rape consistently discriminate on grounds of race in deciding whether men shall live or die. It was the purpose of a Constitutional Amendment now one hundred years old to end forever this invidious practice of systematically subjecting one race to punishments more severe than those customarily meted out to the other. And whatever excuse—we do not say justification—might ever be found for allowing racial discrimination to go uncorrected in the administration of any governmental function, we submit there can be none for blinking discrimination in the matter of taking human life.

Our reason for venturing to renew our request that the Court consider this question is simple enough. The case has now been once argued and submitted, considered by the Court, and ordered reargued. Obviously, the Court now has greater familiarity with the record, with the issues in the case, and with their interrelationship, than would have been possible on the *certiorari* papers in December, 1968. We can do no more—nor less, in a matter of this importance—than to ask the Court's judgment, upon the further study it has given the case, whether the racial discrimination question presented does not warrant its review equally with the other vital issues herein.

Accordingly, we respectfully move that the scope of the Court's writ of *certiorari* be enlarged to include Question 1 of the petition for the writ. See Petition for Writ of Certiorari, pp. 2-33, 35-58.

Respectfully submitted,

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